

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

JOHN DOE,

Defendant.

- - - - - X

APPLICATION TO CLOSE  
COURTROOM AND FILE  
DOCUMENTS UNDER SEAL

Docket No.

RICHARD P. DONOGHUE, United States Attorney for the Eastern District of New York, by Assistant United States Attorney Craig R. Heeren, submits this application for an order to close the courtroom for the defendant's change of plea hearing and bail application and seal the transcript of the proceedings.

1. To comply with the notice requirements set forth in United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005), the government respectfully requests that: (1) a public hearing on this motion be scheduled for January 23, 2019, at 2:30 PM, just prior to the change of plea hearing and bail application; (2) the Court's public calendar reflect that the government has filed a motion for courtroom closure, along with the time and place of the hearing; (3) the public docket sheet in the above-captioned case reflect that a motion for courtroom closure has been filed, as well as the date, time and place of the hearing on the motion; and (4) the Court's calendar for the dates of the hearings not include the defendant's name, but rather use the caption United States v. John Doe. Finally, the government

respectfully requests that, after holding a public hearing on the government's motion on January 23, 2019, the Court enter the enclosed proposed order regarding courtroom closure and sealing.

2. The Second Circuit explained in Alcantara that “[t]he motion itself may be filed under seal, when appropriate, by leave of court, but the publicly maintained docket entries should reflect the fact that the motion was filed, the fact that the motion and any supporting or opposing papers were filed under seal, the time and place of any hearing on the motion, the occurrence of such hearing, the disposition of the motion, and the fact of courtroom closure, whether ordered upon motion of a party or by the Court sua sponte.” Id. at 200.

3. The government has submitted a motion to close the courtroom, under seal, which contains specific facts sufficient to support the necessary findings for the court to close the courtroom following the public hearing.


4. The facts contained in the government's sealed motion establish (1) a substantial probability of prejudice to a compelling interest of the defendant, government or third party; (2) no reasonable alternative to closure can protect the compelling interest; (3) prejudice to the compelling interest overrides the qualified First Amendment right of access; and (4) the requested closure order is narrowly tailored to protect the compelling interest.

WHEREFORE it is respectfully requested that this Court, after holding a public hearing, enter an order to close the courtroom, which contains findings reflecting: (a) the substantial probability that a public proceeding would prejudice the compelling interests identified above; (b) the lack of reasonable alternatives to courtroom closure; and (c) that the

prejudice to the compelling interests overrides the qualified right of the public and the media to access the proceedings.

Dated: Brooklyn, New York  
January 10, 2019

RICHARD P. DONOGHUE  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

By:   
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Craig R. Heeren  
Sarah Evans  
Assistant U.S. Attorneys  
(718) 254-6467/6490

RMT:CRH/SME  
F.# 2013R01026

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ORDER TO CLOSE  
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DOCUMENTS UNDER SEAL

Docket No.

Upon consideration of the joint motion of the United States of America and the defendant JOHN DOE, filed under seal, for an Order: to close the courtroom during the defendant's arraignment and change of plea hearing, and to seal the transcripts of that proceeding and this Order;

Having scheduled a public hearing on the motion and notified the public of the hearing by listing the date, time and location of the hearing on the public docket and the Court's public calendar; and

Having held a public hearing on the motion at which the parties and any intervenors were provided an opportunity to be heard;

Based on the submissions of the parties, the Court makes the following findings:

1. There is a substantial probability that a public proceeding would prejudice a compelling interest of the government in the integrity of significant government

activities entitled to confidentiality, including ongoing investigations of serious criminal activity;

2. No reasonable alternatives to closure of the courtroom exist that can adequately protect the compelling interests that would be prejudiced by a public proceeding, identified above; and

3. The prejudice to the compelling interests identified above overrides the public's and the media's qualified First Amendment right to access the plea proceedings.

Accordingly, pursuant to United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005), and United States v. John Doe, 63 F.3d 121 (2d Cir. 1995),

IT IS ORDERED that the motion to close the courtroom during the defendant's change of plea hearing and to seal the transcripts of the proceeding and this Order is hereby granted;

IT IS FURTHER ORDERED that the closure of the courtroom be tailored by requiring the government, with advance notice to the defendant, to disclose the transcript as required by Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), 18 U.S.C. § 3500 and/or Rule 16 of the Federal Rules of Criminal Procedure;

IT IS FURTHER ORDERED that the closure of the courtroom be tailored by requiring the government and the defendant to move this Court to unseal the transcript of the proceeding and substitute the defendant's true name for "John Doe" in the docket caption when the prejudice to the parties' interests no longer outweighs the public's qualified right to access; and

IT IS FURTHER ORDERED that the public docket will immediately be amended to reflect the occurrence of the hearing on the motion to close the courtroom, the disposition of the motion and the fact of courtroom closure.

SO ORDERED.

Dated: Brooklyn, New York  
January \_\_, 2019

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THE HONORABLE STEVEN M. GOLD  
UNITED STATES MAGISTRATE JUDGE  
EASTERN DISTRICT OF NEW YORK